

### Petition to Regulate GHG Emissions from Mobile Sources and Unreasonable Delay Lawsuit

#### Background

- The International Center for Technology Assessment (ICTA) petitioned EPA in 1999 to set CO2 and other greenhouse gas (GHG) standards for motor vehicles under CAA section 202(a)(1) to address climate change.
- On December 5, 2002, ICTA, Sierra Club and Greenpeace filed an unreasonable delay lawsuit in the United States District Court for the District of Columbia because EPA had not responded to the petition.
- On Monday, February 3, 2003, DOI, on behalf of EPA, filed a motion to dismiss, alleging the plaintiffs lack standing.
  - The plaintiffs asserted only "informational standing" as their basis for the lawsuit, alleging EPA's failure to respond to their petition for rule making has prevented ICTA from providing its members information.

[REDACTED]

- On Wednesday, February 26, 2003, the Plaintiffs amended their complaint, asserting more traditional grounds for standing.
  - ICTA is claiming global warming harm to its employees and directors. [REDACTED]
  - Sierra Club and Greenpeace are claiming global warming harm on behalf of their members. [REDACTED]
  - All three organizations continue to claim harm to the organizations as such, but have added another basis for their standing -- alleged injury to their procedural/statutory right to petition the government. ICTA also tries to explain how EPA's inaction has impeded ICTA's daily operations and cost it money.
- EPA's response is due March 13th, but plaintiffs have indicated that they will agree to more time (we gave them an additional 10 days).

## **Lawsuit and Notices of Intent to Commence Suit Alleging Failure to Conduct 8-year Review of New Source Performance Standards (NSPS) for Utilities**

### **Background**

- A new source performance standard was promulgated for new and modified fossil-fuel-fired steam generating units in 1979, and has been amended several times since.
- The rules establish controls for three pollutants: PM, NO<sub>x</sub> and SO<sub>2</sub>.
- CAA § 111(b) requires EPA to review, and if appropriate revise, NSPSs every 8 years. In addition, CAAA § 403(b) requires EPA, by November 15, 1993, to revise the NSPS for new fossil-fuel-fired electric utility units for SO<sub>2</sub> emissions.

### **Sierra Club Lawsuit**

- On August 27, 2002, EPA received a Notice of Intent to commence a lawsuit (NOI) from the Sierra Club, Our Children's Earth Foundation, and National Parks Conservation Association, alleging EPA's failure to conduct the 8-year review required by CAA § 111(b), and to promulgate SO<sub>2</sub> standards required by CAAA § 403.
- The NOI did not mention CO<sub>2</sub>.
- On February 21, 2003, these parties filed a lawsuit. Paragraph 32 of the complaint states revised NSPS should include emissions limitations for CO<sub>2</sub>.

### **Notice of Intent to Commence Suit from Seven Northeast States**

- On February 20, 2003, Attorneys General from seven States (New York, Connecticut, Maine, New Jersey, Massachusetts, Rhode Island and Washington) sent EPA a NOI based on EPA's failure to conduct the 8-year review required by CAA § 111(b).
- The NOI states the existing NSPS is inadequate, in part, because it does not provide for the control of CO<sub>2</sub> emissions.

**Three Northeast States Notice of Intent to Commence Suit  
Alleging Mandatory Duty to List Carbon Dioxide as a Criteria Pollutant  
and Set National Ambient Air Quality Standard for CO2**

- On January 30, 2003, the States of Massachusetts, Connecticut, and Maine sent EPA a NOI alleging EPA has a mandatory duty under the CAA to list carbon dioxide as a criteria pollutant.
- This, in turn, would trigger the requirement to develop a national ambient air quality standard (NAAQS) for CO2.
- The notice points to the provision in the CAA, and prior EPA legal determinations to assert that CO2 qualifies as an air pollutant under the Act's statutory definition.
- It then cites the Climate Action Report to allege that <sup>\*</sup>EPA has already found that CO2 causes or contributes to air pollution "which may reasonably be anticipated to endanger public health or welfare," the statutory standard for listing an air pollutant as a criteria pollutant.
- Finally, the notice reminds us that there is precedent for mandating the Agency to list an air pollutant, which happened when EPA balked at listing lead in the mid-1970's.

\* the CAR is a state Dept. document